REMARKS

The claims herein remain 1, 3, 9, and 11-26 from the parent application with minor amendments, primarily of form.

The prior related prosecution, to a large extent dwelled on the question of possible suggestions to combine the references as a basis for rejection under 35 U.S.C. § 103. Applicant adheres to the opinions as previously expressed in that regard; even more so in view of a relatively recent Supreme Court case (*KSR International Co. v. Teleflex Inc. et al.* (550 U.S. 127 S. Ct. 1727 (2007)).

The Supreme Court set the standard for evaluating obviousness in its recent decision (*KSR International Co. v. Teleflex Inc. et al.* (550 U.S. 127 S. Ct. 1727 (2007)) to be "expansive and flexible" and "functional." But, the standard is not controlling. Instead the various noted factors only "can" or "might" be indicative of obviousness based on the facts. The Supreme Court in *KSR* enunciated the following principles:

> "[w]hen a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, Section 103 likely bars it patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill….[A] court must ask whether **the improvement is more than the predictable use of prior art elements according to their established functions**.

The Supreme Court in *KSR* also stated that:

> a patent composed of several elements is not proved obvious merely by demonstrating that **each of its elements was independently known in the prior art**.

The Supreme Court in *KSR* has also stated that:

> [o]ften, it will be necessary for a court **to look to interrelated teachings of multiple patents**; the effects of demands known to the design community or present in the market place.

Further, the Supreme Court stated in *KSR* that:

> The Court [in *United States v. Adams*, 383 U.S. 39, 51-52 (1966)] relied upon the corollary principle **that** when **the prior art teaches away from**

combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious.

In view of the current law, the asserted reference combination raises doubts. Reconsideration is respectfully requested.

Respectfully submitted,

BERRY & ASSOCIATES P.C.

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By: /Byard G. Nilsson/
Byard G. Nilsson
Registration No. 17,350

9255 Sunset Blvd., Suite 810
Los Angeles, CA 90069
(310) 247-2860